STATE OF MICHIGAN

COURT OF APPEALS

CATHERINE RUTH REEVES and ANTHONY LYNN REEVES, Plaintiffs-Appellants, v CARSON CITY HOSPITAL and LYNN SQUANDA, D.O., Defendants-Appellees.	UNPUBLISHED April 6, 2006 No. 266469 Ingham Circuit Court LC No. 03-001557-NH

Before: Neff, P.J., and Saad and Bandstra, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order granting defendants' motion to strike their expert witness and granting summary disposition in favor of defendants. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This case involves a claim of medical malpractice related to the treatment of Catherine Reeves' ectopic pregnancy by Dr. Squanda, a physician who is board certified in family medicine but who was working in the emergency room of Carson City Hospital at the time the alleged malpractice occurred. Plaintiffs filed suit alleging that Squanda committed medical malpractice in her treatment of Catherine Reeves. Plaintiffs filed an affidavit of merit signed by Eric Davis, M.D., who is board certified in emergency medicine but not in family medicine.

Defendants moved to strike Davis as an expert witness, arguing that Davis was not qualified to testify against Squanda under MCL 600.2169 because he was not board certified in family medicine. Defendants relied on *Halloran v Bhan*, 470 Mich 572, 577; 683 NW2d 129 (2004), in which the Supreme Court held that an expert in a medical malpractice case must have the same board certification in a specialty as does the party against whom or on whose behalf his testimony is offered. The trial court found that Davis was not qualified to testify as an expert witness against Squanda because he was not board certified in family medicine. The trial court granted defendants' motion to strike plaintiffs' expert witness, and subsequently granted summary disposition in favor of defendants.

We review an issue of statutory interpretation de novo. *Id*. at 576. We review a trial court's decision as to whether a witness is qualified as an expert for an abuse of discretion. *Tate v Detroit Receiving Hosp*, 249 Mich App 212, 215; 642 NW2d 346 (2002).

MCL 600.2169(1)(a) provides that if a "party against whom or on whose behalf" testimony is offered in a medical malpractice case is board certified in a specialty, "the expert witness must be a specialist who is board certified in that specialty."

We affirm. In *Halloran*, *supra*, the plaintiff alleged that the defendant, who was board certified in internal medicine and who also held a certificate of added qualification in critical care medicine, committed malpractice during his treatment of the decedent in the emergency room. The plaintiff's proposed expert witness was board certified in anesthesiology, and also held a certificate of added qualification in critical care medicine. The defendant moved to strike the plaintiff's expert witness on the ground that he failed to satisfy the criteria of MCL 600.2169(1)(a). The trial court granted the motion, finding that the witness was not qualified to testify as an expert witness because he and the defendant did not share the same board certification. We reversed the trial court's decision, concluding that because the plaintiff's expert and the defendant shared the same subspecialty, the expert met the requirements of MCL 600.2169(1)(a). *Halloran*, *supra* at 575-576. The *Halloran* Court reversed this Court's decision, concluding that "MCL 600.2169(1)(a) requires that the proposed expert witness must have the same board certification as the party against whom or on whose behalf the testimony is offered." *Id*. at 574. The *Halloran* Court concluded that because the plaintiff's expert witness was not board certified in the same specialty as the defendant, he was not qualified to testify as an expert witness under MCL 600.2169(1)(a). *Id*. at 579. Here, *Halloran*, *supra*, supports the trial court's decision that Davis was not qualified under MCL 600.2169(1)(a) to give expert testimony against Squanda.

Finally, we reject plaintiffs' argument that the trial court erred in considering defendants' motion because it was in reality an untimely motion for summary disposition. The transcript of the hearing on the motion reveals that after the trial court struck plaintiffs' expert witness, it declined to grant summary disposition for the reason that the motion did not seek that relief. Defendants indicate that plaintiffs' counsel sought entry of an order granting summary disposition pursuant to MCR 2.116(C)(10). Plaintiffs have not sought to contradict this assertion. Given that defendants could have sought summary disposition pursuant to MCR 2.116(C)(10) "at any time[,]" MCR 2.116(D)(3), and that plaintiffs advocated the entry of summary disposition following the trial court's ruling, we find that the trial court did not err by considering defendants' motion.

Affirmed.

/s/ Janet T. Neff
/s/ Henry William Saad
/s/ Richard A. Bandstra